

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF MILPITAS FINDING AN URGENT PUBLIC HEALTH AND SAFETY CONCERN EXISTS AT SPRING VALLEY HEIGHTS SUBDIVISION AND APPROVING EXTENSION OF EMERGENCY WATER SUPPLY

WHEREAS, The Spring Valley Heights Mutual Water Company (SPVH-MWC) provides drinking water to the Spring Valley Heights subdivision located within the City of Milpitas but outside the Urban Growth Boundary; and

WHEREAS, SPVH-MWC is experiencing a water supply shortage due to diminished well capacities which has critically impaired the system's ability to provide sufficient supply to meet the community's sanitary and fire safety needs; and

WHEREAS, SPVH-MWC requested temporary emergency water supply from the City of Milpitas; and

WHEREAS, The City of Milpitas operates a water distribution system and can provide temporary water to the SPVH-MWC; and

WHEREAS, Resolution No. 6796 allows the City Council to approve any emergency water supply for a specified limited time period to areas outside the Urban Growth Boundary of the City when the following four criteria are met:

- An urgent public health or safety concern exists
- An independent licensed professional engineer has concluded that this temporary emergency supply is the only economically justifiable solution
- The site subdivision map was recorded prior to November 3, 1998
- The Applicant is responsible for the proportionate share of service cost

WHEREAS, The four criteria have been satisfied as follows:

- The SPVH-MWC reservoir water volume dropped below critical levels on September 10, 2002 and the well system was unable to provide replenishment of the water supply
- An independent licensed professional engineer has concluded that this temporary emergency supply is necessary during the interim until the new well is installed, tested, and permitted
- The independent licensed professional engineer has also concluded that a planned new well may not be a dependable source of water supply and hence an emergency backup supply is necessary until the well is completed and dependability is verified
- The Spring Valley Heights subdivision map was recorded prior to November 3, 1998
- SPVH-MWC has agreed to purchase and transport the water from the City of Milpitas system

WHEREAS, staff approved emergency water supply on an interim basis for SPVH-MWC beginning September 12, 2002; and

WHEREAS, Council approved Resolution No. 7223 allowing City water supply on an emergency basis for SPVH-MWC beginning September 12, 2002 and ending when SPVH-MWC water supply well capacities can be adequately increased, or until January 31, 2003, whichever is sooner; and

WHEREAS, SPVH-MWC has trucked water from City water supply as allowed under Council Resolution No. 7223; and

WHEREAS, the water supply emergency continues due to a delay in the construction and the unknown dependability of the new well.

NOW, THEREFORE, BE IT RESOLVED, The City Council of the City of Milpitas finds that an urgent public health and safety concern continues to exist at Spring Valley Heights and

approves an extension of emergency water supply to the SPVH-MWC in accordance with the following conditions:

1. This Resolution supercedes Resolution No. 7223.
2. This extension of emergency water supply is allowed until there is dependable water supply from SPVH-MWC wells, or a permanent solution to the water shortage is found, or until December 31, 2003, whichever is sooner.
3. SPVH-MWC shall submit water use meter readings the last week of every month and reimburse the City of Milpitas at the second residential tier rate (currently set at \$2.14 per hundred cubic feet) for all emergency water supply obtained from the City.
4. SPVH-MWC shall be responsible for coordination with City staff for water supply points of connection, time of day and rate of draw for filling tanker trucks to transport water, and for meeting Fire Department fire protection requirements.
5. SPVH-MWC shall be responsible for meeting all Department of Health Services requirements related to use of the temporary emergency water supply.

PASSED AND ADOPTED this 21st day of January, 2003, by the following vote:

AYES: ()

NOES: ()

ABSENT: ()

ABSTAIN: ()

ATTEST:

APPROVED:

Gail Blalock, City Clerk

Jose Esteves

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

**Spring Valley Heights
Homeowners Association &
Mutual Water Company**

City of Milpitas
City Hall, Milpitas Boulevard
Milpitas, California 95035

January 8, 2003

Dear Mssrs. McNeely, Wong and Ms. Chatterjee:

This letter is in response to your request for confirmation of several points regarding the current status of the supply of water for Spring Valley Heights. We also include our request for an extension of the permit to allow us to acquire water from the City of Milpitas and an additional request for a permanent connection to the City of Milpitas water system.

These requests are necessary due to the continuing fragile supply water for drinking and fire protection within Spring Valley Heights.

With respect to the short term, our fourth well has not progressed toward completion and certification as fast as we had anticipated. The contractor made an error and has taken considerable time to attempt to correct that error and begin the process of cleaning the well after drilling and obtaining samples for testing. This process is underway now and we now believe that the Well #4 could be ready for test submittal to the State for certification by the middle of March, 2003.

Please note that we have adopted a numbering system, which identifies the wells in the community by a simple sequential number 1 through 4. We are currently being supplied by Well #3 with Wells 1 and 2 being totally dry and non-operational.

Well #3 is currently producing approximately 30 to 35 gallons of water per minute. Since it is the rainy season, consumption has dropped within the community. In addition we have reduced consumption by concerted conservation efforts. History shows that the consumption will rise and tax the supply as occurred last summer once the rainy season is over. As we described in our meetings, the production of Well #3 dropped significantly last summer, due to what we believe is a sudden change in the water level or routing of the underground supply in the immediate area of Well #3. We have no idea or ability to predict or calculate how long Well #3 will continue to supply water.

The development of Well #4 does not address the power situation or the installation of pipes or the second tank we need to increase total capacity. Until we receive word that the water is suitable for drinking it is not feasible to initiate efforts to getting PG&E to install the required power and our installation of the new piping. As we said in the earlier letter, we believe that the issue of getting

PG&E to install additional power to the site is going to be difficult to achieve based on the first reaction we received. Essentially they said the existing power was all they were required to install and declined to address the need for three phase power at the site to run the pump.

Once we know we have a viable well regarding capacity to supply and the quality is confirmed we will install the necessary pipes to the storage tank(s).

A new storage tank is being pursued as the extra capacity is needed regardless of the source of the water.

Currently, we remain in essentially the same position as when the City granted us initial permission to acquire water from the City. This permission expires on Jan 31, 2003. To address the short term supply of water if or when the current well fails, we ask that the permit to acquire water via a connection to the City supply be extended indefinitely pending resolution of the Well #4 and our request for a permanent connection to the City supply.

To qualify for this supply we are still in full compliance with the requirements set forth in Resolution 6796 as stated in our initial letter requesting the emergency connection to allow us to truck the water into the community. Spring Valley Heights was and remains an established part of the City of Milpitas prior to the requisite date within the resolution. There remains a clear and present health and safety danger when or if the current supply drops or fails. There is no feasible way to supply water in any other manner and no additional supply exists nearby or on site within the community.

With regard to our request for a permanent connection to the City of Milpitas Water system:

As we have noted in our prior letters and meetings with the City, SPVH has employed the services of a geo/hydro engineering company, Todd Engineering, to obtain a professional engineering evaluation of the situation. This was done as required by the Resolution 6796 of the General Plan Amendment Section 2A(II), "Urgent Public Health or Safety Concern Affecting Existing Development" to obtain permission to purchase water from a City of Milpitas connection point—and truck it to the community water tank.

Todd Engineering has provided a letter to the City with the results of their study.

An additional evaluation from Todd Engineering has been included with this letter to confirm that our community water situation remains essentially the same.

As we have stated in the earlier letters and meetings, the fourth well is at best a potential temporary relief, with no other source of supply known if or when either well fails to produce.

This is supported by the opinion of Todd Engineering, other well users, experience of well drilling companies in the area and our own historical evidence.

We have met with several members of the City of Milpitas staff as well as Planning, Engineering and Fire department members to review these requirements, history, current plans and options. We believe clear to all parties concerned that the current water supply situation at Spring Valley Heights is tenuous at best. We request that immediate action be pursued, in conjunction with the City of Milpitas, the San Francisco Water District and the County of

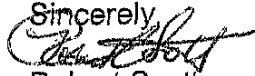
Santa Clara as needed, to provide a viable long-term supply of water for the health and safety of the Milpitas residents in the Spring Valley Heights area.

In conclusion, we believe that SPVH has met the requirements of Resolution 6796 of the General Plan Amendment Section 2A(II), "Urgent Public Health or Safety Concern Affecting Existing Development" to qualify for consideration for connection to the City of Milpitas water supply.

Please contact any of the people named below in reply to this request.

Robert Scott, Pres., SPVH HOA 408-253-4580 (home); 408-605-0012 (cell)
Richard Tetschlag, VP SPVH HOA 408-942-8157 (home)
Ed Kandefer, Dir. SPVH HOA 408-262-5050 (home) 408-799-2266 (cell)
& Pres. SPVH MWC

Sincerely,



Robert Scott
Pres. SPVH HOA

Cc: SPVH HOA and MWC Boards of Directors

TODD ENGINEERS

GROUNDWATER • WATER RESOURCES • HYDROGEOLOGY • ENVIRONMENTAL ENGINEERING

MEMORANDUM BY FAX

Date: January 8, 2003
To: Marilyn Nichol, Associate Engineer
Engineering Department
City of Milpitas
Fax# 408-586-3305
From: Raymond K. Will *Raymond K. Will*
Registered Civil Engineer #26005
Subject: Emergency Water Supply, Spring Valley Heights Mutual Water Company
UPDATED

This letter is to provide my opinion regarding the continuing emergency water shortage described in the Emergency Water Request, dated September 24, 2002 from the Spring Valley Heights Homeowners Association (SPVH) and Mutual Water Company prepared pursuant to the provisions of Resolution 6796 of the City of Milpitas (City) General Plan Amendment, Section 2A (ii) "Urgent Public Health or Safety Concern Affecting Existing Development".

Todd Engineers was retained to provide a professional opinion concerning the provision cited above and submitted a technical memorandum to the City on September 26, 2002 stating the following opinion:

"It is my professional opinion that the only economically justifiable solution to this public health concern is to obtain City water."

My conclusion is based on review of the following: 1) site conditions observed during a site inspection of the four water wells, water storage tank, water distribution pipeline system; 2) site topographic and geologic maps prepared by the US Geologic Survey, 3) plan maps of the lots, roads, etc. of the subdivision. 4) electric log of the #4 test well, 5) water chemistry laboratory data. 6) telephone discussions with City planning and engineering department staff.

The emergency purchase and truck transport of City water although of relatively higher cost (2.5 cent/gallon) that water from the SPVD Mutual Water Company system, is necessary because the production Well #3 does not have sufficient capability to meet current domestic and fire protection needs. The drawdown of the water level within the well is causing the pump controls to turn the pump off because there is insufficient groundwater recharge to sustain

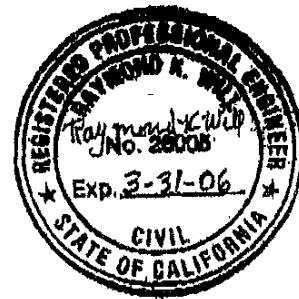
working water levels. This is a result of local drought conditions and declining groundwater table.

The cost of trucking water from an alternative source (San Jose Water Company) was considered but was 12.5 cents/gallon, much greater than the cost of City water and would cost over \$40,000 per month.

The new production Well #4 may provide an additional source of water but the long-term capacity is not yet known. And historically, each of the previous 3 production wells initial capacity was sufficient but declined within 3 or 4 years to an insufficient volume for a permanent water supply.

Discussions with Bob Scott indicate that although the SPVH Mutual Water Company has had some success with valving down Well #3 to maintain some flow, and water conservation efforts by residents, the district has been required to purchase water, transported by truck, to maintain a sufficient water supply to residents.

Efforts to repair and complete Well #4 have not yet been completed and water quality is questionable at this time, requiring further evaluation. Thus the emergency water shortage continues to exist.



Cc: Bob Scott - SPVH Fax#408-934-1886

RESOLUTION NO. 7223

A RESOLUTION OF THE CITY OF MILPITAS FINDING AN URGENT PUBLIC HEALTH AND SAFETY CONCERN EXISTS AT SPRING VALLEY HEIGHTS SUBDIVISION AND APPROVING TEMPORARY EMERGENCY WATER SUPPLY

WHEREAS, the voters of the City of Milpitas by approving Ordinance No. 38-742 enacted an Urban Growth Boundary in 1998, which generally restricts the provision of City services outside of the Urban Growth Boundary; and

WHEREAS, the Spring Valley Heights Mutual Water Company (SPVH-MWC) provides drinking water to the Spring Valley Heights subdivision, which is located within the City of Milpitas but outside the City-established Urban Growth Boundary; and

WHEREAS, SPVH-MWC is experiencing a water supply shortage due to diminished well capacities that has critically impaired the system's ability to provide sufficient supply to meet the community's sanitary and fire safety needs; and

WHEREAS, SPVH-MWC requested temporary emergency water supply from the City of Milpitas; and

WHEREAS, the City of Milpitas operates a water distribution system and can provide temporary water to the SPVH-MWC; and

WHEREAS, Ordinance No. 38-742 allows the City Council to approve the provision of City water service to areas outside the Urban Growth Boundary of the City only when the following four criteria are met:

- An urgent public health or safety concern exists
- An independent licensed professional engineer has concluded that this temporary emergency supply is the only economically justifiable solution to the public health or safety concern

- Prior to November 3, 1998, the area to which service would be provided had either a vested right to develop an approved land use or an approved subdivision map pursuant to which residential units had been constructed
- The Applicant is responsible for the proportionate share of service cost

WHEREAS, the four criteria have been satisfied as follows:

- The SPVH-MWC reservoir water volume dropped below critical levels on September 10, 2002 and the well system was unable to provide replenishment of the water supply.
- An independent licensed professional engineer has concluded that this temporary emergency supply is the only economically justifiable solution during the interim period until a new well is installed, tested, and permitted
- The Spring Valley Heights subdivision map was recorded and units constructed prior to November 3, 1998.
- SPVH-MWC has agreed to purchase and transport the water from the City of Milpitas system at its own cost.

WHEREAS, staff approved emergency water supply on an interim basis for SPVH-MWC beginning September 12, 2002.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Milpitas finds that an urgent public health and safety concern exists at Spring Valley Heights and approves temporary emergency water supply to the SPVH-MWC in accordance with the following conditions:

1. This temporary emergency water supply is retroactively approved beginning September 12, 2002 when the critical shortage began.
2. This temporary emergency water supply is allowed until the SPVH-MWC water supply well capacities can be adequately increased, or until January 31, 2003, whichever is sooner.
3. SPVH-MWC shall submit water use meter readings the last week of every month and reimburse the City of Milpitas at the second residential tier rate of \$2.14 per hundred cubic feet for all emergency water supply obtained from the City.

4. SPVH-MWC shall be responsible for coordination with City staff for water supply points of connection, time of day and rate of draw for filling tanker trucks to transport water, and for meeting Fire Department fire protection requirements.
5. SPVH-MWC shall be responsible for meeting all Department of Health Services requirements related to use of the temporary emergency water supply.

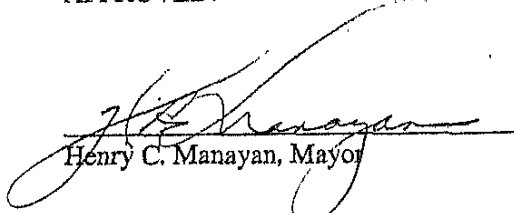
PASSED AND ADOPTED this 1st day of October, 2002, by the following vote:

AYES:	(5)	Mayor Manayan and Councilmembers Livengood, Dixon, Esteves and Lawson
NOES:	(0)	None
ABSENT:	(0)	None
ABSTAIN:	(0)	None

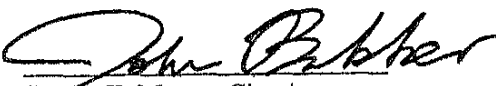
ATTEST:


Gail Blalock, City Clerk

APPROVED:


Henry C. Manayan, Mayor

APPROVED AS TO FORM:


for Steven T. Mattas, City Attorney